IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-960

ENVIRONMENTAL PROTECTION AGENCY,
Petitioner,

v.

STATE OF MARYLAND, ET AL.,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

MEMORANDUM FOR RESPONDENT, STATE OF MARYLAND

FRANCIS B. BURCH,
Attorney General,
State of Maryland,
HENRY R. LORD,
Deputy Attorney General,
1 South Calvert Building,
Baltimore, Maryland 21202,
Attorneys for Respondent,
State of Maryland.

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On January 7, 1976, the Solicitor General, on behalf of the Environmental Protection Agency, filed a petition for writ of certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit in the above-referenced cause.

OPINION BELOW

The opinion of the Court of Appeals is reported at 530 F.2d 215, and is printed in full at Appendix A, pp. 1a-37a, of the petition.

CONSTITUTIONAL PROVISIONS, STATUTES, AND REGULATIONS INVOLVED

The constitutional and statutory provisions involved are set forth in petitioner's Appendix C, pp. 41a-65a. In an Appendix to this response, Maryland presents the following Federal regulations: 40 C.F.R. §§52.1095; 52.1096; 52.1098; 52.1100; 52.1106, which were invalidated by the Fourth Circuit's decision.

STATEMENT OF THE CASE

The pertinent statutory and regulatory programs are summarized at pp. 2-5 of the government's petition. The State of Maryland brought suit in the United States Court of Appeals for the Fourth Circuit to invalidate certain orders promulgated by the Environmental Protection Agency (EPA) as part of the Transportation Plan for the Baltimore Air Quality Control Region. Maryland objected that in seeking to compel the State to enact and administer Federal air pollution control programs, EPA exceeded the permissible exercise of the Federal commerce power and violated the principles of federalism inherent in the United States Constitution. Maryland also suggested that such regulations were beyond EPA's authority under the Clean Air Act, and that in certain respects the adoption of the regulations was arbitrary and capricious. The Court of Appeals held that EPA lacked authority under the Clean Air Act to compel Maryland to implement, through legislation and regulations, Federal air pollution control programs. This construction of the Clean Air Act was buttressed by the Court's doubts relative to the constitutionality of the Act, assuming that Congress had intended EPA to adopt such measures.

The Federal government has sought review of the lower court's decision, asserting that a conflict exists

between the holding of the Fourth Circuit and decisions by the Third Circuit in *Pennsylvania v. Environmental Protection Agency,* 500 F.2d 243 (1974), and by the Court of Appeals for the District of Columbia in *District of Columbia v. Train,* 521 F.2d 971 (1975) (petitions for cert. pending *sub. nom. Train v. District of Columbia,* No. 75-1055; *Commonwealth of Virginia v. Train,* No. 75-1050).

RESPONSE

This case raises an important question of interpretation regarding the Clean Air Act of 1970: did Congress, and if so could Congress constitutionally, intend to authorize EPA to mandate legislation from a state in the area of air pollution control? The Court of Appeals accepted Maryland's argument that Congress neither could nor did intend such a Federal usurpation of a state's sovereign functions.

Maryland noted before the lower court that the commerce power may encompass a federal ability to regulate state activities in the broad spectrum of interstate commerce, such as employing workers in schools and hospitals, *Maryland v. Wirtz,* 392 U.S. 183, 88 S. Ct. 2017, 20 L. Ed. 2d 1020 (1968); as running a state-owned railroad, *Parden v. Terminal Railway,* 377 U.S. 184, 84 S. Ct. 1207, 12 L. Ed. 2d 233 (1964). The Federal government, however, acting under the commerce power, cannot mandate that a state must exercise regulatory control over certain aspects of interstate commerce. The Tenth Amendment, guaranteeing that powers never surrendered to the national government remain with the states, limits the Federal exercise of the commerce power.

The Court further adopted Maryland's reasoning in holding that such an ambiguous indication of Congres-

sional intent as is evidenced in the Clean Air Act will not be construed to mean that Congress intended to broaden the scope of the government's power to regulate interstate commerce.

The bases of decision in *Maryland v. Environmental Protection Agency* have been touched as well by both the Ninth Circuit and the Court of Appeals for the District of Columbia. *Brown v. Environmental Protection Agency,* 521 F.2d 827 (9th Cir. 1975) (petition for cert. pending *sub. nom. Environmental Protection Agency v. Brown,* No. 75-909), involved EPA's ordering California to implement federal clean air programs. The Court believed "that Congress would not have intended in this obscure manner to take such a step in the light of the delicacy with which federal-state relations always have been treated by all branches of the Federal government" *Id.* at 834. Leaving no doubt as to its opinion on the constitutionality of EPA's action, the Court observed:

> To treat the governance of commerce by the states as within the plenary reach of the Commerce Power would in our opinion represent such an abrupt departure from previous constitutional practices as to make us reluctant to adopt an interpretation of the Clean Air Act which would force us to confront the issue. * * * To make *governance* indistinguishable from *commerce* for the purposes of the Commerce Power cannot be equated to the "unintrusive" regulation of economic activities of the states upheld by the Supreme Court in *Maryland v. Wirtz,* [supra] and *Fry v. United States* [421 U.S. 542, 95 S. Ct. 792, 44 L. Ed. 2d 363 (1975)] *Id.* at 839.

In *District of Columbia v. Train, supra,* the Court held that much of EPA's program for mandatory state implementation of clean air controls was not only outside the scope of Congressional intent, but unconstitutional as well.

In direct conflict with the aforementioned decisions, however, is *Pennsylvania v. Environmental Protection Agency,* 500 F.2d 240 (3rd Cir. 1974), where the Court held that Congress intended EPA to compel states' participation in the clean air effort, and that so construed the Clean Air Act was a legitimate exercise of the commerce power. We should note that *Pennsylvania v. Environmental Protection Agency, supra,* has been criticized or given scant credence by the decisions in the other circuits noted above. The Ninth Circuit suggests "that the Third Circuit failed to recognize the difference between a state engaging in commerce, as all states must under the Commerce Power, and a state's regulation of the commerce of others." *Brown v. Environmental Protection Agency, supra,* at 383 n. 45.

District of Columbia v. Train, supra, also conflicts with the decision of the Fourth Circuit in one respect. Identical air pollution regulations pertaining to the Virginia, District of Columbia, and Maryland sections of the Washington metropolitan area were considered by the Court in *District of Columbia v. Train.* As noted above, the Court generally paralleled the Fourth Circuit in finding that EPA lacks authority to compel state implementation of air pollution control programs. However, the Court excepted those provisions requiring states to refuse registration to vehicles not meeting federal standards, holding such requirements within the ambit of Congressional authority under the commerce clause. The regulations struck down entirely by the Fourth Circuit in *Maryland v. Environmental Protection Agency* also contain provisions concerning registration of vehicles. Maryland supports the petition of Virginia, *Commonwealth of Virginia v. Train,* No. 75-1050, to review the decision of the Court of Appeals for the District of Columbia, inasmuch as that decision does not support entirely the broad protection of State

sovereignty afforded by the Fourth Circuit's opinion in *Maryland v. Environmental Protection Agency.*

While Maryland urges the correctness of the Fourth Circuit's decision, it also recognizes that policy considerations expressed in Rule 19(1) (b) of the Rules of the Supreme Court, concerning the resolution of decisional conflicts among the courts of appeal, weigh heavily in favor of this Court's granting the federal government's petition for certiorari.

CONCLUSION

For the foregoing reason, Maryland does not formally oppose the issuance of a writ of certiorari to the Court of Appeals for the Fourth Circuit in the matter of *Maryland v. Environmental Protection Agency.*

Respectfully submitted,

FRANCIS B. BURCH,
Attorney General,
State of Maryland,
HENRY R. LORD,
Deputy Attorney General,
1 South Calvert Building,
Baltimore, Maryland 21202,
Attorneys for Respondent,
State of Maryland.

APPENDIX

The Following sections of 40 CFR Part 52 have been invalidated by the decision of the Fourth Circuit:

§ 52.1095 Inspection and maintenance program.

(a) Definitions:

(1) "Inspection and maintenance program" means a program for reducing emissions from in-use vehicles through identifying vehicles that need emission control-related maintenance and requiring that such maintenance be performed.

(2) "Light-duty vehicle" means a gasoline-powered motor vehicle rated at 6,000 lb. gross vehicle weight (GVW) or less.

(3) "Medium-duty vehicle" means a gasoline-powered motor vehicle rated at more than 6,000 lb. GVW and less than 10,000 lb GVW.

(4) "Heavy-duty vehicle" means a gasoline-powered motor vehicle rated at 10,000 GVW or more.

(5) All other terms used in this section that are defined in Part 51, Appendix N, of this chapter are used herein with the meanings so defined.

(b) This section is applicable within the Metropolitan Baltimore Intrastate AQCR.

(c) The State of Maryland shall establish an inspection and maintenance program applicable to all light-duty, medium-duty, and heavy-duty vehicles registered in the area specified in paragraph (b) of this section that operate on public streets or highways over which it has ownership or control. The State may exempt any class or category of vehicles that the State finds is rarely used on public streets or highways (such as classic or antique vehicles). No later than April 1, 1974, the State shall submit legally adopted regulations to the Administrator establishing such a program. The regulations shall include:

(1) Provisions for inspection of all light-duty, medium-duty, and heavy-duty motor vehicles at periodic intervals no more than 1 year apart by means of a loaded emission test.

(2) Provisions for inspection failure criteria consistent with the failure of 30 percent of the vehicles in the first inspection cycle.

(3) Provisions to ensure that failed vehicles receive within two weeks, the maintenance necessary to achieve compliance with the inspection standards. These shall include sanctions against individual owners and repair facilities, retest of failed vehicles following maintenance, use of a certification program to ensure that repair facilities performing the required maintenance have the necessary equipment, parts, and knowledgeable operators to perform the tasks satisfactorily, and use of such other measures as may be necessary or appropriate.

(4) A program of enforcement to ensure that vehicles are not intentionally readjusted or modified subsequent to the inspection and/or maintenance in such a way as would cause them to no longer comply with the inspection standards. This enforcement program might include spot checks of idle adjustments and/or a suitable type of physical tagging. This program shall include appropriate penalties for violation.

(5) Provisions for beginning the first inspection cycle by August 1, 1975, and completing it by July 31, 1976.

(6) Designation of an agency or agencies responsible for conducting, overseeing, and enforcing the inspection and maintenance program.

(d) After July 31, 1976, the State shall not register or allow to operate on public streets or highways any light-duty, medium-duty, or heavy-duty vehicle that does not comply with the applicable standards and procedures adopted pursuant to paragraph (c) of this section. This shall not apply to the initial registration of a new motor vehicle.

(e) After July 31, 1976, no owner of a light-duty, medium-duty, or heavy-duty vehicle shall operate or allow the operation of such vehicle that does not comply with the applicable standards and procedures adopted pursuant to paragraph (c) of this section. This shall not apply to the initial registration of a new motor vehicle.

(f) The State of Maryland shall submit, no later than February 1, 1974, a detailed compliance schedule showing the steps it will take to establish and enforce an inspection and maintenance program pursuant to paragraph (c) of this section, including:

(1) The text of needed statutory proposals and regulations that it will propose for adoption.

(2) The date by which the State will recommend needed legislation to the State legislature.

(3) The date by which necessary equipment will be ordered.

(4) A signed statement from the Governor or his designee identifying the sources and amounts of funds for the program. If funds cannot legally be obligated under existing statutory authority, the text of needed legislation shall be submitted.

[38 FR 34249, Dec. 12, 1973]

§ 52.1096 Vacuum spark advance disconnect retrofit.

(a) Definitions:

(1) "Vacuum spark advance disconnect retrofit" means a device or system installed on a motor vehicle that prevents the ignition vacuum advance from operating either when the vehicle's transmission is in the lower gears, or when the vehicle is traveling below a predetermined speed, so as to achieve reduction in exhaust emissions of hydrocarbon and carbon monoxide of at least 25 and 9 percent, respectively, from 1967 and earlier light-duty vehicles.

(2) "Light-duty vehicle" means a gasoline-powered motor vehicle rated at 6,000 lb. gross vehicle weight (GVW) or less.

(3) All other terms used in this section that are defined in Part 51, Appendix N, of this chapter are used herein with meanings so defined.

(b) This section is applicable within the Metropolitan Baltimore Intrastate AQCR.

(c) The State of Maryland shall establish a retrofit program to ensure that on or before January 1, 1976, all light-duty vehicles of model years prior to 1968 registered in the area specified in paragraph (b) of this section are equipped with an appropriate vacuum spark advance disconnect retrofit device or other device, as approved by the Administrator, that will reduce exhaust emissions of hydrocarbons and carbon monoxide at least to the same extent as a vacuum spark advance disconnect retrofit. No later than February 1, 1974, the State of Maryland shall submit to the Administrator a detailed compliance schedule showing the steps it will take to establish and enforce a retrofit program pursuant to this section, including the text of statutory proposals, regulations, and enforcement procedures that the State proposed for adoption. The compliance schedule shall also include a date by which the State shall evaluate and approve devices for use in this program. Such date shall be no later than September 30, 1974.

(d) No later than April ~~1,~~ 1974, the State shall submit legally adopted regulations to the Administrator establishing such a program. The regulations shall include:

(1) Designation of an agency responsible for evaluating and approving devices for use on vehicles subject to this section.

(2) Designation of an agency responsible for ensuring that the provisions of subparagraph (3) of this paragraph are enforced.

(3) Provisions for beginning the installation of the retrofit devices by January 1, 1975, and completing the installation of the devices on all vehicles subject to this section no later than January 1, 1976.

(4) A provision that starting no later than January 1, 1976, no vehicle for which retrofit is required under this section shall pass the annual emission tests provided for by § 52.1095 unless it has been first equipped with an approved vacuum spark advance disconnect retrofit device, or other device approved

pursuant to this section, which the test has shown to be installed and operating correctly. The regulations shall include test procedures and failure criteria for implementing this provision.

(5) Methods and procedures for ensuring that those installing the retrofit devices have the training and ability to perform the needed tasks satisfactorily and have an adequate supply of retrofit components.

(6) Provision (apart from the requirements of any general program for periodic inspection and maintenance of vehicles) for emissions testing at the time of device installation or some other positive assurance that the device is installed and operating correctly.

(e) After January 1, 1976, the State shall not register or allow to operate on its streets or highways any light-duty vehicle that does not comply with the applicable standards and procedures adopted pursuant to paragraph (d) of this section.

(f) After January 1, 1976, no owner of a vehicle subject to this section shall operate or allow the operation of any such vehicle that does not comply with the applicable standards and procedures implementing this section.

(g) The State may exempt any class or category of vehicles from this section which the State finds is rarely used on public streets and highways (such as classic or antique vehicles) or for which the State demonstrates to the Administrator that vacuum spark advance disconnect devices or other devices approved pursuant to this section are not commercially available.

[38 FR 34249, Dec. 12, 1973]

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§ 52.1098 Light-duty air/fuel control retrofit.

(a) Definitions:

(1) "Air-Fuel control retrofit" means a system or device (such as modification to the engine's carburetor or positive crankcase ventilation system) that results in engine operation at an increased air-fuel ratio so as to achieve reduction in exhaust emissions of hydrocarbons

and carbon monoxide of at least 25 and 40 percent, respectively, from 1968 through 1971 model year light-duty vehicles.

(2) "Light-duty vehicle" means a gasoline-powered motor vehicle rated at 6,000 lb gross vehicle weight (GVW) or less.

(3) All other terms used in this section that are defined in Part 51, Appendix N, of this chapter are used herein with meanings so defined.

(b) This section is applicable within the Metropolitan Baltimore Intrastate AQCR.

(c) The State of Maryland shall establis.. retrofit program to ensure that on or before August 1, 1976, all light-duty vehicles of 1968-1971 model years which are not required to be retrofitted with an oxidizing catalyst or other approved device pursuant to § 52.1097, which are registered in the area specified in paragraph (b) of this section are equipped with an appropriated air/fuel control device or other device as approved by the Administrator that will reduce exhaust emissions of hydrocarbons and carbon monoxide at least to the same extent as an air/fuel control device. No later than February 1, 1974, the State of Maryland shall submit to the Administrator a detailed compliance schedule showing the steps it will take to establish and enforce a retrofit program pursuant to this section, including the text of statutory proposals, regulations, and enforcement procedures that the State proposes for adoption. The compliance schedule shall also include a date by which the State shall evaluate and approve devices for use in this program. Such date shall be no later than September 30, 1974.

(d) No later than April 1, 1974, the State shall submit legally adopted regulations to the Administrator establishing such a program. The regulations shall include:

(1) Designation of an agency responsible for evaluating and approving devices for use on vehicles subject to this section.

(2) Designation of an agency responsible for ensuring that the provisions of subparagraph (3) of this paragraph are enforced.

(3) Provisions for beginning the installation of the retrofit devices by August 1, 1975, and completing the installation of the devices on all vehicles subject to this section no later than August 1, 1976.

(4) A provision that starting no later than August 1, 1976, no vehicle for which retrofit is required under this section shall pass the annual emission tests provided for by § 52.1095 unless it has been first equipped with an approved air/fuel control retrofit, or other device approved pursuant to this section, which the test has shown to be installed and operating correctly. The regulations shall include test procedures and failure criteria for implementing this provision.

(5) Methods and procedures for ensuring that those installing the retrofit devices have the training and ability to perform the needed tasks satisfactorily and have an adequate supply of retrofit components.

(6) Provision (apart from the requirements of any general program for periodic inspection and maintenance of vehicles) for emissions testing at the time of device installation or some other positive assurance that the device is installed and operating correctly.

(e) After August 1, 1976, the State shall not register or allow to operate on its streets or highways any vehicle that does not comply with the applicable standards and procedures adopted pursuant to paragraph (d) of this section.

(f) After August 1, 1976, no owner of a vehicle subject to this section shall operate or allow the operation of any such vehicle that does not comply with the applicable standards and procedures implementing this section.

(g) The State may exempt any class or category of vehicles from this section which the State finds is rarely used on public streets and highways (such as classic or antique vehicles) or for which the State demonstrates to the Administrator that air/fuel control

devices or other devices approved pursuant to this section are not commercially available.

[38 FR 34250, Dec. 12, 1973]

* * * * * *

§ 52.1100 Heavy-duty air/fuel control retrofit.

(a) Definitions:

(1) "Air/fuel control retrofit" means a system or device (such as modification to the engine's carburetor or positive crankcase ventilation system) that results in engine operation at an increased air-fuel ratio so as to achieve reduction in exhaust emissions of hydrocarbon and carbon monoxide from heavy-duty vehicles of at least 30 and 40 percent, respectively.

(2) "Heavy-duty vehicles" means a gasoline-powered motor vehicle rated at 10,000 lb gross vehicle weight (GVW) or more.

(3) All other terms used in this section that are defined in Part 51, Appendix N, of this chapter are used herein with meanings so defined.

(b) This section is applicable within the Metropolitan Baltimore Intrastate AQCR.

(c) The State of Maryland shall establish a retrofit program to ensure that on or before May 31, 1977, all heavy-duty vehicles registered in the area specified in paragraph (b) of this section are equipped with an appropriate air/fuel control retrofit or other device as approved by the Administrator that will reduce exhaust emissions of hydrocarbons and carbon monoxide at least to the same extent as an air/fuel control retrofit. No later than April 1, 1974, the State of Maryland shall submit to the Administrator a detailed compliance schedule showing the steps it will take to establish and enforce a retrofit program pursuant to this section, including the text of statutory proposals, regulations, and enforcement procedures that the State proposes for adoption. The compliance schedule shall also include a date by which the State shall evaluate and approve devices for use in this program. Such date shall be no later than January 1, 1975.

(d) No later than September 1, 1974, the State shall submit legally adopted regulations to the Administrator establishing such a program. The regulations shall include:

(1) Designation of an agency responsible for evaluation and approving devices for use on vehicles subject to this section.

(2) Designation of an agency responsible for ensuring that the provisions of subparagraph (3) of this paragraph are enforced.

(3) Provisions for beginning the installation of the retrofit devices by January 1, 1976, and completing the installation of the device on all vehicles subject to this section no later than May 31, 1977.

(4) A provision that starting no later than May 31, 1977; no vehicle for which retrofit is required under this section shall pass the annual emission tests provided for by § 52.1095 unless it has been first equipped with an approved air/fuel control retrofit, or other device approved pursuant to this section, which the test has shown to be installed and operating correctly. The regulations shall include test procedures and failure criteria for implementing this provision.

(5) Methods and procedures for ensuring that those installing the retrofit devices have the training and ability to perform the needed tasks satisfactorily and have an adequate supply of retrofit components.

(6) Provision (apart from the requirements of any general program for periodic inspection and maintenance of vehicles) for emissions testing at the time of device installation or some other positive assurance that the device is installed and operating correctly.

(e) After May 31, 1977, the State shall not register or allow to operate on its streets or highways any vehicle that does not comply with the applicable standards and procedures adopted pursuant to paragraph (d) of this section.

(f) After May 31, 1977, no owner of a vehicle subject to this section shall operate or allow the operation of

any such vehicle that does not comply with the applicable standards and procedures implementing this section.

(g) The State may exempt any class or category of vehicles from this section which the State finds is rarely used on public streets and highways (such as classic or antique vehicles) or for which the State demonstrates to the Administrator that air/fuel control retrofits or other devices approved pursuant to this section are not commercially available.

[38 FR 34251, Dec. 12, 1973]

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§ 52.1106 Study and establishment of bikeways in the Baltimore area.

(a) Definitions:

(1) "Baltimore CBD" is defined as the area in the City of Baltimore, Maryland, enclosed by, but not including, Centre Street, Fallsway, Falls Avenue, Pratt Street, Greene Street, Franklin Street, and Eutaw Street.

(b) This regulation is applicable in the Metropolitan Baltimore Intrastate AQCR.

(c) The State of Maryland shall, according to the schedule set forth in paragraph (d) of this section, conduct a study of, and shall in that study recommend locations for exclusive bicycle lanes and bicycle parking facilities in the area described in paragraph (b) of this section. The study shall be made with a view toward maximum safety and security. The study shall include consideration of the physical designs for such lanes and parking facilities, and of rules of the road for bicyclists and, to the extent that present rules must be modified because of bicycle lanes, new rules of the road for motorists. In conducting the study, opportunity shall be given for public comments and suggestions. The study shall recommend as large a network of new CBD (and return) oriented commuter bicycle lanes and bicycle parking facilities as is practicable within the area described in paragraph (b) of this section and shall

recommend physical designs for said lanes and facilities. The network shall contain at least 15 miles of exclusive bicycle lanes in each direction.

(d) The State of Maryland shall submit to the Administrator no later than March 1, 1974, a detailed compliance schedule showing the steps that will be taken to carry out the study required by paragraph (c) of this section. The compliance schedule shall at a minimum include:

(1) Designation of the agency responsible for conducting the study.

(2) A date for initiation of the study, which date shall be no later than May 1, 1974.

(3) A date for completion of the study, and submittal thereof to the Administrator, which date shall be no later than March 1, 1975.

(4) A detailed timetable describing the steps that must be taken and when these steps will be taken to ensure the timely submittal of any legislation needed to generally authorize establishment of bikeways and parking facilities in Maryland to the State legislature.

(e) On or before April 1, 1975, the Administrator shall submit to the State of Maryland his response to the study required by paragraph (c) of this section, and shall, in that response, either approve the route and parking facility location and designs recommended in the study, or shall designate alternative and/or additional route and parking facility locations and designs.

(f) The State of Maryland and such county and local jurisdictions as the State shall request to participate in the establishment of the networks (the State must request the participation of a county or local jurisdiction if the participation of that jurisdiction is necessary to the establishment of the lanes and other facilities required by this section) shall establish, according to the schedule set forth in the compliance schedule required by paragraph (g) of this section, bike lanes and parking facilities along the routes and in the locations

approved or designated by the Administrator pursuant to paragraph (e) of this section.

(g) On or before June 1, 1975, the State of Maryland, and such county and local jurisdictions as the State has requested to participate (and are, therefore, required to participate by paragraph (f) of this section) shall submit to the Administrator compliance schedules which shall show in detail the steps which each governmental entity will take to establish the bike lanes and parking facilities required by this section. The schedule must include as a minimum the following:

(1) Each lane and parking facility must be identified with a date set for its establishment.

(2) The design, security and safety features of each lane and parking facility must be precisely described and shown to be in accord with the designs approved or designated by the Administrator pursuant to paragraph (e) of this section.

(3) A date must be set for the initiation of lane and parking construction, which date shall be no later than September 1, 1975.

(4) A date must be set for completion of 50 percent of lane and parking construction, which date shall be no later than February 1, 1976.

(5) A date must be set for completion of 100 percent of lane and parking construction, which date shall be no later than May 31, 1976.

(6) Designations must be made of the agencies responsible for guaranteeing the establishment of the lanes and facilities in accordance with the Administrator's response to the State study.

(7) Signed statements of the chief executives of all jurisdictions involved in the establishment of the lanes and parking facilities required by this section, or their designees, must be submitted identifying the sources and amounts of funding for the programs required by this section, along with a timetable to ensure that proper funds will be available.

(h) No later than August 1, 1975, each governmental entity required by this section to establish bicycle lanes and/or parking facilities, shall submit to the Administrator legally adopted regulations sufficient to implement and enforce all of the requirements of this section.

(i) Notwithstanding paragraph (c) of this section, if prior to the completion and submittal of the study required by paragraph (c) of this section, the State of Maryland has good and reasonable cause, through public comment or otherwise, to believe that the maximum practicable network of bicycle lanes will be less than 15 miles, in each direction, the State shall so notify the Administrator and shall obtain his concurrence or nonconcurrence, and shall conduct the remainder of the study to assure that the network of lanes shall be that mileage specified by the Administrator. Notice pursuant to this paragraph (i) shall be given no later than the beginning of the ninth month of the study.

[38 FR 34254, Dec. 12, 1973]

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